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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,638	02/06/2002	Masashi Ando	Q67810	6088
7590 11/26/2004				
SUGHRUE MION, PLLC 2100 Pennsylvania Avenue, NW Washington, DC 20037-3213			EXAMINER OLSEN, KAJ K	
			ART UNIT 1753	PAPER NUMBER

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/066,638

Applicant(s)

ANDO ET AL.

Examiner

Kaj K Olsen

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 15 November 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): claims 16, 19, 20, 22, 23, 61, 65, 65 are now allowed.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached discussion.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 16, 19, 20, 22, 23, 57-61 and 64-66.

Claim(s) objected to: _____

Claim(s) rejected: 17, 18, 62 and 63.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

DETAILED ACTION

1. The examiner acknowledges the applicant's request for an interview prior to the filing of an RCE and would be happy discuss the issues in this case at the applicant's convenience.

Please see the phone number listed at the end of this office action.

Response to Arguments

2. Applicant's arguments filed 11-15-2004 have been fully considered but they are not persuasive. The examiner will withdraw the rejection relying on Oshima (see the final rejection). Applicant in 09/045,938 (of which the present invention is a divisional of) went on record stating that the '938 application and Oshima were commonly owned (see paper 26 dated 8/14/01). Hence, Oshima cannot be utilized as prior art against the claims in an obviousness type rejection. Applicant has also submitted a translation of the foreign priority document 09-264972 dated 9/11/1997. This would overcome any potential rejection based on any published documents based on the foreign priority data of Oshima (earliest publication based on these foreign priority documents is EP 0 810 430 which was published 12-3-1997).
3. The examiner will also withdraw the rejections of claims 16, 19, 20, 22, 23, 61, 64 and 65 in view of the applicant's arguments concerning the limitation "when the detected oxygen concentration assumes a value substantially the same as that in atmosphere" in claims 16, 22 and 23. Kato and GB '873 do not disclose nor render obvious performing the calibration under this condition.
4. With respect to the other rejections, applicant generally urges that Kato does not disclose calibrating a sensor by determining a zero point under the various claimed conditions. Instead,

Kato merely teaches that the linearity of the sensor response is minimally dependent on temperature. This is unpersuasive. Fig. 2(a) clearly shows the sensitivity of the sensor being determined as a function of NO concentration. This is the calibration of the sensor and the calibration is factoring in the zero point (whether the zero point is making a contribution to the calibration or not). With respect to this calibration occurring in "atmosphere", see paragraph 18 from the non-final office action of 10-24-2003. With respect to the other specified conditions, see paragraphs 12 and 13 from the same office action.

5. With respect to GB '873, applicant urges that this teaching does not teach calibrating. However, this is not what GB '873 is being relied on for and this point is moot.

6. With respect to claim 17 specifically, applicant urges that there is no teaching of a calibration based on a zero point. However, fig. 2(a) clearly shows the use of a point either exactly at zero or at a point so close to zero to be patentably indistinct from applicant's "zero point". With respect to the issue of whether Kato would have utilized its zero data point, this issue has been dealt with in paragraph 20 of the previous non-final office action of 10-24-2003.

7. With respect to claim 18 specifically, applicant urges that fig. 4(b) of Kato has nothing to do with a zero point calibration. First, fig. 4(b) has a number of data points at or around zero. Moreover, fig. 4(b) shows that a rich gas could have been utilized to determine the calibration for the sensor. Hence, rich gas is an obvious choice of gas for performing a calibration for fig. 2(a).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (571) 272-1344. The


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examiner can normally be reached on Monday through Thursday from 5:30 A.M. to 3:00 P.M. and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AU 1753
November 23, 2004


KAJ K. OLSEN
PRIMARY EXAMINER